

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRIDGET HARRIS)	
Claimant)	
)	
VS.)	
)	
TONY'S PIZZA)	
Respondent)	Docket No. 264,090
)	
AND)	
)	
CONTINENTAL CASUALTY CO.)	
Insurance Carrier)	

ORDER

Respondent requests review of a preliminary Order entered by Administrative Law Judge Bruce E. Moore on May 21, 2001.

ISSUE

The sole issue raised on review by the respondent is whether the claimant's accidental injury arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT

Having reviewed the entire evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Bridget Harris began working for Tony's Pizza as a bakery line attendant in November 1998. She worked for approximately a year and a half as a bakery line attendant and then she worked for approximately eight months to a year at first shift packaging.

Harris testified that she began experiencing pain in her feet while working in the bakery. Her job duties in the bakery required her to stand on concrete approximately eight hours a day. The first shift packaging job duties required the claimant to stand on concrete an average of 6-8 hours a day. Harris specifically testified that she had not had any problems with her feet prior to her employment with respondent.

On July 31, 2000, Harris notified respondent that her feet were hurting and tingling and she was advised to see her personal physician. Harris scheduled an appointment with her personal physician, Dr. Long. Dr. Long was not available so Harris was seen by the nurse practitioner on one occasion.

Between July 31, 2000, and December 15, 2000, Harris had surgery on her elbows. The left elbow was done in July 2000 and the right elbow in December 2000. Although Harris was off work for the surgeries to her arms, she testified her feet continued to worsen between July 2000 and December 2000.

Harris testified that she renewed her complaints about her feet in December 2000 and was referred to the company physician, Dr. Shafer. The doctor concluded the problems Harris was experiencing in her lower extremities were not work-related.

Harris was examined by Lee R. Dorey, M.D. at the request of her counsel. Dr. Dorey diagnosed right and left ankle tarsal tunnel syndrome with mild pes planovalgus on the right. The doctor concluded that these conditions were related to her job with respondent.

Following a preliminary hearing on April 17, 2001, the Administrative Law Judge referred Harris for an independent medical examination with Steven J. Howell, M.D. for diagnosis, recommended treatment and causation opinions regarding Harris' complaints.

Dr. Howell reported that Harris' bilateral foot pain was a combination of several things. The doctor noted Harris has bilateral Morton's foot deformity and that she may have a component of neuropathy along with slightly diminished bone density. The doctor concluded that Harris simply has feet that cannot tolerate standing on concrete all day at work and that her bilateral foot pain is 75 percent due to her anatomy and 25 percent due to her work on a concrete floor.

Upon receipt of Dr. Howell's independent medical report, the Administrative Law Judge issued his decision that Harris is entitled to medical care and he ordered medical expenses incurred since March 1, 2001, including medical mileage, to be paid as authorized medical expense.

CONCLUSIONS OF LAW

Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.¹ "Burden of proof" means the burden to persuade by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²

¹K.S.A. 44-501(a).

²K.S.A. 44-508(g).

Respondent argues that Dr. Howell's report notes Harris has bilateral Morton's foot deformities which are the long second metatarsal deformities that can give rise to consistent pain underneath the second metatarsals. Respondent then notes that Harris complained that the condition of her feet continued to worsen even when she was off work. Accordingly, respondent contends that Harris' symptoms must be caused by the conditions unrelated to her work.

The fact that Harris has preexisting conditions in her feet as diagnosed by Dr. Howell is not controlling. The test is not whether the job-related activity caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.³ Both Drs. Dorey and Howell attributed Harris' bilateral foot problems to standing on concrete at work. Harris' uncontroverted testimony was that her feet were asymptomatic until she began her employment with respondent and thereafter became progressively symptomatic. The evidence at this stage in the proceedings establishes that Harris' asymptomatic preexisting condition was aggravated by standing and walking on concrete at work.

The Board finds that Harris has met her burden of proof to establish that she sustained a work-related injury arising out of and in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated May 21, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July 2001.

BOARD MEMBER

c: E. Thomas Pyle III, Attorney, McPherson, Kansas
Mickey W. Mosier, Attorney, Salina, Kansas
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³*Woodward v. Beech Aircraft Corporation*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).